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09/894,352	06/27/2001	Roger D. Way		7510

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International Plant Management, Inc.  
55826 60th Avenue  
Lawrence, MI 49064

EXAMINER

KIZILKAYA, MICHELLE R

ART UNIT

PAPER NUMBER

1661

DATE MAILED: 10/02/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/894,352

Applicant(s)

Way et al.

Examiner

Michelle Kizilkaya

Art Unit

1661



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1)  Responsive to communication(s) filed on Jun 27, 2001.

2a)  This action is FINAL.      2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

### Disposition of Claims

4)  Claim(s) 1 is/are pending in the application.

4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are a)  accepted or b)  objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.

12)  The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

13)  Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)  All b)  Some\* c)  None of:

1.  Certified copies of the priority documents have been received.
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

14)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a)  The translation of the foreign language provisional application has been received.

15)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

1)  Notice of References Cited (PTO-892)

2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_

4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_

5)  Notice of Informal Patent Application (PTO-152)

6)  Other: \_\_\_\_\_

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## **DETAILED ACTION**

### **Objection to the Declaration**

Applicant is required to submit a new Oath or Declaration as the Declaration currently on file appears to be incorrect due to the checked box stating the plant was found in a cultivated area. Said box is in fact an indication of having discovered a new plant such as naturally occurring mutation, as opposed to crossing a new plant which according to applicant was true in the instant case.

### **Objection to the Disclosure**

#### **37 CFR 1.163**

The following is a quotation of section (a) of 37 CFR 1.163:

(a) The specification must contain as full and complete a disclosure as possible of the plant and the characteristics thereof that distinguish the same over related known varieties, and its antecedents, and must particularly point out where and in what manner the variety of plant has been asexually reproduced. In the case of a newly found plant, the specification must particularly point out the location and character of the area where the plant was discovered.

#### **35 USC § 112**

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

In plant applications filed under 35 U.S.C. 161, the requirements of 35 U.S.C. are limited. The following is a quotation of 35 U.S.C. 162:

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No plant patent shall be declared invalid for noncompliance with section 112 of this title if the description is as complete as is reasonably possible. The claim in the specification shall be in formal terms to the plant shown and described.

The disclosure is objected to under 37 CFR 1.163 (a) and 35 U.S.C. 112, first paragraph because the specification presents less than a full, clear and complete botanical description of the plant and the characteristics which define same per se and which distinguish the plant from related known cultivars and antecedents.

More Specifically,

A. Applicant should set forth all cultivar names throughout the entire specification in single quotation marks unless preceded by the term --cultivar-- according to the International Code of Nomenclature for Cultivated Plants, article 29.

B. Applicant should set forth all scientific binomials in the proper scientific nomenclature which requires hybrid x to capital, and non-italicized or underlined. Refer to abstract and any other areas of the specification which require alteration.

C. Regarding the comparison of the parent plants, applicant should set forth differences between the parents and instant plant rather than similarities as is currently disclosed.

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- D. Applicant should set forth quantitative information relative to branches.
- E. Applicant should set forth information regarding the floral buds in terms of size, form, color, peduncle, and number per spur.
- F. Applicant should set forth a color designation for pollen.
- G. Applicant should account for juice content, at least in general terms.
- H. Any references to other plants, whether parent or comparative should also include disclosure as to the status of patentability, whether patented in the United States, currently the subject of a pending U.S. plant patent application, or unpatented. If patented, --(U.S. Plant Patent No.)-- should be inserted after the cultivar name. If the subject of a pending application, such should be referred to by serial number. If unpatented, --(unpatented)-- should be inserted after the cultivar name.
- I. Applicant shold account for whether or not the pit has been observed for cracking.

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The above listing may not be complete. Applicants should carefully compare the claimed plant with the botanical descriptions set forth in the specification to ensure completeness and accuracy and to distinguish the plant within this expanding market class. Any further botanical information should be imported into the specification, as should any additional or corrected information relative to same.

**Claim Rejection**

**35 U.S.C. § 112, 1st and 2nd Paragraphs**

Claim 1 is rejected under 35 U.S.C. 112, first paragraph as not being supported by an admissible cultivar name on the basis that plant names are associated with and are used to identify particular plants and are therefore descriptive , and the cultivar designation ‘White’ is objectionable for the reasons advanced previously in this Office Action.

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**Future Correspondence**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michelle R. Kizilkaya whose telephone number is (703) 308-4324. The Examiner can normally be reached Monday through Friday from 9:00 a.m to 5:30 p.m..

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Bruce Campell, can be reached on (703) 308-4205. The fax number for the group is (703) 305-3041 or 308-4242.

Any inquiry of a general nature or relating to the status of this application should be directed to the Matrix Customer Service Center whose telephone number is (703) 308-0196.

M.R. Kizilkaya

  
BRUCE R. CAMPELL, PH.D  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600